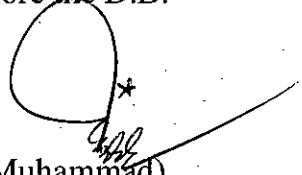


09.11.2020

~~Counsel for appellants~~ present. Mr. Muhammad Riaz Khan Painsdakhel, Assistant Advocate General for respondents present.

The Bar is observing general strike, therefore, the matter is adjourned to 18.01.2021 for hearing before the D.B.

  
(Mian Muhammad)  
Member (E)


18.01.2021

Counsel for the appellant and Addl. AG for the respondents present.

Former states that after the demise of appellant his legal heirs did not make any contact. He, therefore, requests for adjournment of instant matter sine-die. His request is also owing to some pending matters, wherein the proposition regarding devolution of benefits upon the legal heirs of a deceased civil servant, is involved.

The request of learned counsel appears to be reasonable, therefore, the appeal in hand is adjourned sine die. The legal representative(s) of appellant may apply for its restoration as and when required.


  
(Mian Muhammad)  
Member(E)

  
Chairman

30-4.2020


Due to COVID19, the case is adjourned to

14/7/2020 for the same as before.

  
Reader

14.07.2020

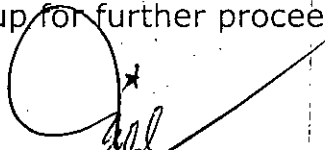
Due to COVID-19, the case is adjourned to 07.09.2020  
for the same.

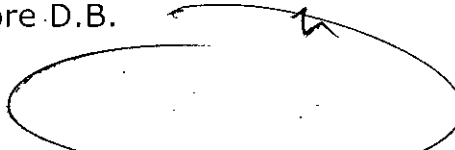
  
Reader

07.09.2020

Mr. Amjid Nawaz, Advocate junior to senior counsel is present for appellant. Mr. Usman Ghani, District Attorney for the respondents is also present.

Learned junior to senior counsel informed the bench that the appellant has died during the pendency of the instant appeal however, the list of his legal representative/legal heirs has not been submitted. Learned counsel is directed to follow law and the requisite procedure and ensure its compliance. Adjourned to 09.11.2020. File to come up for further proceedings before D.B.

  
(Mian Muhammad)  
Member (Executive)

  
(Muhammad Jamal Khan)  
Member (Judicial)

15.01.2020

Due to general strike on the call of Khyber Pakhtunkhwa Bar Council, instant appeal is adjourned to 03.03.2020 for further proceedings/arguments before D.B.

  
Member

  
Member

3-03-2020

Counsel for the appellant present. Addl: AG for respondents present. Learned counsel for the appellant seeks adjournment. Adjourned. To come up for arguments on 30.04.2020 before D.B.

  
Member

  
Member

Legal heirs

14.11.2019

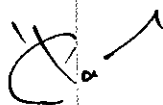
Counsel for the appellant and Mr. Usman Ghani, District Attorney for the respondents present.

Learned District Attorney at the outset pointed out that although instant appeal has been fixed for hearing before the Larger/Full Bench but there is no formulation of legal/factual proposition to be considered by the Bench.

During the discussion it revealed that this Tribunal has already handed down atleast two judgments regarding the abatement of appeal of a civil servant upon his demise. Apart from that some judgments by the August Supreme Court as well as learned Federal Service Tribunal have also been referred to which essentially touch the proposition.

We, therefore, consider it appropriate to remove instant appeal from the list of Larger/Full Bench and assign it to a Division Bench for decision in accordance with law after hearing learned counsel for the parties.

Adjourned to 15.01.2020 before a Division Bench.



(M. Hamid Mughal)  
Member



(Ahmad Hassan)  
Member



Chairman



(M. Amin Khan Kundi)  
Member



(Hussain Shah)  
Member

29.08.2019


Learned counsel for the appellant present. Mr. Riaz Khan Paindakhel learned Assistant Advocate General for the respondents present. Mr. Muhammad Amin Khan Kundi Member of this Tribunal is on tour to Camp Court D.I Khan, therefore, the instant matter is adjourned to 14.11.2019 for arguments before Larger Bench.



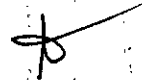
(Muhammad Hamid Mughal)  
Member



Chairman



(Hussain Shah)  
Member



(Ahmed Hassan)  
Member


02.05.2019


Counsel for the appellant and Addl: AG for respondents present.

Due to leave of one of learned Member (Mr. Ahmad Hassan), the instant matter is adjourned to 11.07.2019 for arguments before Larger Bench.

  
(Mr. Hamid Mughal)  
Member


  
Chairman

  
(Hussain Shah)  
Member

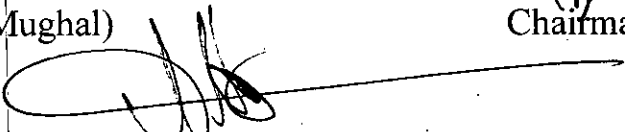
  
(M. Amin Khan Kundi)  
Member

11.07.2019

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Due to engagement of Members of this Tribunal (Mr. Muhammad Amin Khan Kundi and Mr. Hussain Shah) at Camp Court Abbottabad, the instant matter is adjourned to 29.08.2019 before Larger Bench

  
(Muhammad Hamid Mughal)  
Member

  
Chairman

  
(Ahmad Hassan)  
Member

29.01.2019

Counsel for the appellant present. Mr. Kabirullah Khattak,  
Addl: AG alongwith Mr. Zahid Ur Rehman, Supdt for respondents  
present. Counsel for the appellant seeks adjournment. Adjourned.  
Case to come up for arguments on 19.03.2019 before D.B.

  
(Ahmad Hassan)  
Member

(M. Hamid Mughal)  
Member

19.03.2019 Miss Uzma Syed Advocate for appellant and Asstt.  
AG for the respondents present.

Learned counsel for the appellant has invited  
attention of Tribunal to the order dated 14.01.2019  
whereby instant matter was required to be fixed  
alongwith similar nature appeals before a Larger Bench  
but inadvertently the matter was posted before a Division  
Bench on 29.01.2019 and was accordingly adjourned for  
hearing today.

Office is directed to comply with the order dated  
14.01.2019 and accordingly fixed this appeal before the  
Larger Bench on 02.05.2019.

  
Member

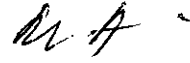
  
Chairman

12.10.2018

Counsel for the appellant present. Mr. Ayub Amin, junior counsel for respondent No 1 and Mr. Kabirullah Khattak, Additional AG for respondents No. 2 & 3 present. Junior counsel for respondent No. 1 requested for adjournment on the ground that learned senior counsel for respondent No. 1 has gone to august Supreme Court of Pakistan. Adjourned. To come up for arguments on 22.11.2018 before D.B.



(Ahmad Hassan)  
Member



(Muhammad Amin Khan Kundi)  
Member

22.11.2018

Learned counsel for the appellant and Mr. Kabir Ullah Khattak learned Additional Advocate General present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 14.01.2019 before D.B.

  
Member  
Member

14.01.2019

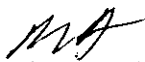
Junior to counsel for the appellant present. Mr. Usman Ghani, District Attorney for respondents present. Counsel for the appellant stated that similar nature of appeal have been fixed for arguments before larger bench, therefore the same may also be fixed with the said appeals. Requested accepted. To come up for arguments on 29.01.2019 before Larger Bench.

  
(Ahmad Hassan)  
Member  
(M. Amin Khan Kundi)  
Member



17.05.2018

Appellant absent. Counsel for the appellant is also absent. However, junior to senior counsel for appellant present and seeks adjournment. Mr. Kabirullah Khattak, Additional AG for the respondents also present. Adjourned. To come up for arguments on 30.07.2018 before D.B.



(Muhammad Amin Khan Kundi)  
Member




(Muhammad Hamid Mughal)  
Member

30.07.2018

Appellant absent. Learned counsel for the appellant is also absent. However, junior counsel for the appellant present and seeks adjournment. Mr. Khalid Rehman, Advocate for respondent No. 1 and Mr. Kabirullah Khattak, Additional AG for respondents No. 2 & 3 present. Adjourned. To come up for arguments on 18.09.2018 before D.B.



(Ahmad Hassan)  
Member (E)



(Muhammad Hamid Mughal)  
Member (J)

18.09.2018

Counsel for the appellant present. Mr. Subhan Ahmad, Assistant (Litigation) for respondent No. 1 and Mr. Riaz Ahmad Painsdakhel, Assistant AG for respondents No. 2 & 3 present. Representative of respondent No. 1 requested for adjournment on the ground that learned counsel for respondent No. 1 is not available today. Adjourned. To come up for arguments on 12.10.2018 before D.B.




(Hussain Shah)  
Member



(M. Amin Khan Kundi)  
Member

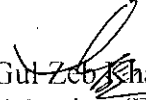
30.10.2017


Appellant in person and Addl: AG alongwith Mr. Amjad Ali, Assistant and Mr. Jafar Ali, Senior Clerk, for respondents present. Written reply submitted. To come up for rejoinder and final arguments on 17.01.2018 before D.B.

  
Ahmad Hassan  
(Member)

17.01.2018


Counsel for the appellant present. Mr. Zia Ullah, DDA for the respondents present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 21.03.2018 before D.B.


  
(Gul Zeb Khan)  
Member (E)

  
(Muhammad Hamid Mughal)  
Member (J)

21.03.2018

Clerk of the counsel present. Mr. Zia Ullah, DDA for the respondents present. Clerk of the counsel seeks adjournment as his senior counsel is not available today. Adjourned. To come up for arguments on 17.05.2018 before D.B.

  
(Muhammad Amin Kundi)  
Member

  
(Muhammad Hamid Mughal)  
Member

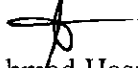
13.07.2017

Appellant alongwith his counsel present. Mr. Khalid Rehman, Advocate for respondent No. 1 and Mr. Kabirullah Khattak, Assistant AG for the respondents No. 2 & 3 also present. Written reply by respondent No. 1 submitted while learned Assistant AG requested for adjournment on behalf of respondents No. 2 & 3. Adjourned. To come up for written reply/comments on behalf of respondent No. 2 & 3 on 08.08.2017 before S.B.

  
(Muhammad Amin Khan Kundi)  
Member

08.08.2017

Appellant in person and Addl:AG alongwith Mr. Subhanullah, Litigation Assistant for respondents present. Written reply on behalf of respondent no.2 and 3 not submitted. Requested for adjournment. Last opportunity granted. To come up for written reply/comments on behalf of respondents no.2 and 3 on 21.09.2017 before S.B.

  
(Ahmad Hassan)  
Member

21.09.2017

Counsel for the appellant and Addl: AG alongwith Mr. Yar Gul, Senior Clerk for respondents no. 2 and 3 present. Written reply not submitted. Requested for adjournment. Another last opportunity granted. To come up for written reply/comments on 30.10.2017 before S.B.

  
(Ahmad Hassan)  
Member

24.04.2017

Counsel for the appellant present. Preliminary arguments heard and case file perused. The appellant joined the Health Department as Ward Orderly on 16.04.1980. Two different date of births were recorded in his service book. The concerned competent authority wrote 20 years as per CNIC and 30/31 on the basis of medical certificate issued by the Medical Superintendent of Police and Services Hospital, Peshawar. The date of birth of the appellant recorded in the CNIC is 1959. He was retired from service by the respondents on 15.04.2009, whereas the actual date of retirement is 15.04.2019. He preferred departmental appeal on 15.05.2009 which was referred to the Director General Health, Khyber Pakhtunkhwa for arranging the medical board to determine his date of birth on 29.11.2016, which was not responded within the stipulated period. Apparently the appeal is time barred. Learned counsel for the appellant was directed to file an application for condonation of delay. Accordingly he has filed an application.

Appellant Deposited  
Security & Process Fee

Points urged need consideration. Admit. Subject to limitation. Appellant is directed to deposit security and process fee within 10 days, notices be issued to the respondents for written reply/comments for 25.05.2017 before S.B.

(Ahmad/Hassan)

Member

25.05.2017

Clerk to counsel for the appellant and Addl. AG for the respondents present. Written reply not submitted. Requested for adjournment. Request accepted. To come up for written reply/comments on 13.07.2017 before S.B.

(AHMAD HASSAN)




MEMBER

Counsel for the appellant present. Preliminary arguments

heard and case file perused. The appellant joined the Health Department as Ward Orderly on 16.04.1980. Two different date of births were recorded in his service book. The concerned competent authority wrote 20 years as per CNIC and 30/31 on the basis of medical certificate issued by the Medical Superintendent of Police and Services Hospital, Peshawar. The date of birth of the appellant recorded in the CNIC is 1959. He was retired from service by the respondents on 15.04.2009, whereas the actual date of retirement is 15.04.2019. He preferred departmental appeal on 15.05.2009 which was referred to the Director General Health, Khyber Pakhtunkhwa for arranging the medical board to determine his date of birth on 29.11.2016, which was not responded within the stipulated period. Apparently the appeal is time barred. Learned counsel for the appellant was directed to file an application for condonation of delay. Accordingly he has filed an application.

Form- A  
FORM OF ORDER SHEET

Court of \_\_\_\_\_  
Case No. 314 /2017


S.No.	Date of order proceedings	Order or other proceedings with signature of judge or Magistrate
1	2	3
1	06/04/2017	<p>The appeal of Mr. Muneeb Khan resubmitted today by Mr. Saadullah Khan Marwat Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	7-4-2017	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>11-04-2017</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	11.04.2017	<p>Counsel for the appellant seeks adjournment Adjourned for preliminary hearing to 24.04.2017 before S.B.</p> <p style="text-align: right;"> Chairman</p>

The appeal of Mr. Muneeb Khan son of Lajbar Khan Ex-Ward Orderly KTH Hospital Peshawar received today i.e on 28.03.2017 is incomplete on the following score which is returned to the counsel for the appellatant for completion and resubmission within 15 days.

- 1- Memorandum of appeal may be got signed by the appellatant.
- 2- Index of the appeal may be prepared according to the Khyber Pakhtunkhwa Service Tribunal rules 1974.
- 3- Copy of impugned order is not attached with the appeal which may be placed on it.
- 4- Annexures of the appeal may be attested.
- 5- Annexures of the appeal may be flagged.
- 6- Annexures of the appeal are not in sequence which may be annexed serial wise as mentioned in the memo of appeal.
- 7- Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 609 /S.T,

Dt. 29/03 /2017

  
REGISTRAR  
SERVICE TRIBUNAL  
KHYBER PAKHTUNKHWA  
PESHAWAR.

Mr. Saadullah Khan Marwat Adv. Pesh.

*Jir*

*Re-submitted after  
completion.*

*[Handwritten mark]*

**BEFORE THE KPK SERVICE TRIBUNAL PESHAWAR**

S.A No. 314 /2017

Muneeb Khan

versus

Medical Supd; & Others

**I N D E X**

S. No	Documents	Annex	P. No.
1.	Memo of Appeal		1-3
2.	Appointment order	"A"	4-6
3.	Certificate dated 12.03.2009	"B"	7
4.	Impugned retirement order		8
5.	DG, letter dated 19-05-2009	"C"	9
6.	Representation dated 29-11-2016	"D"	10-11

Dated: 27.03.2017

Through

Appellant



Arbab Saiful Kamal  
Advocate.  
21-A Nasir Mansion,  
Shoba Bazaar, Peshawar.  
Ph: 0300-5872676  
0311-9266609

**BEFORE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A No. 314 /2017

Khyber Pakhtukhwa  
Service Tribunal

Diary No. 295

Dated 28/3/2017

Muneeb Khan S/o Lajbar Khan  
Ex-Ward Orderly, Khyber Teaching  
Hospital, Peshawar . . . . . Appellant

Versus

- 1. Medical Superintendent, Khyber Teaching Hospital, Peshawar
- 2. Secretary, Health, Govt. of KP, Peshawar
- 3. Director General, Health Services, KP, Peshawar. . . . . Respondents

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**APPEAL U/S 4 OF SERVICE TRIBUNAL ACT, 1974  
AGAINST THE IMPUGNED RETIREMENT ORDER  
DATED 15-04-2009 WHEREBY THE APPELLANT  
WAS RETIRED FROM SERVICE FROM A WRONG  
DATE I.E. 15-04-2009 INSTEAD OF 15-04-2019  
ACCORDING TO HIS ACTUAL AGE I.E. 60 YEARS  
AND AGAINST NOT DECIDING REPRESENTATION  
APPEAL DATED 29-11-2016 OF APPELLANT**

Filed to-day

Registrar  
28/3/17

⇔<=>⇔<=>⇔<=>⇔<=>⇔

**Respectfully Sheweth:**

- 1. That the appellant joined the service as Ward Orderly on 16-04-1980. Two date of birth were recorded by the concerned authority as twenty years as per his NIC and secondly 30/31 years in the Service Book. (Copy as Annex "A")

Re-submitted to-day  
and filed.

Registrar  
06/04/17



2. That since the date of appointment, appellant was performing his duties to the best of his ability and to the entire satisfaction of superiors.
3. That Medical Superintendent, Police and Services Hospital, Peshawar issued him Certificate on dated 12-03-2009, wherein date of birth of appellant was assessed 1959 which was also in accordance with NIC i.e. 1959. (Copy as Annex "B")
4. That the appellant was retired from service by the respondents department on wrong date of birth i.e. 15-04-2009, whereas, the actual date of retirement of appellant would be 15-04-2019, meaning thereby that his retirement deprived him of his legitimate right of service as well as of pay and other benefits in illegal manner and against the relevant Law.
5. That the appellant at the time of illegal retirement preferred so many appeals to the authority, whereby the Chief Executive referred the matter to Director General (Health) Peshawar, but without any response. (Copy as Annex "C")
6. That on 29-11-2016, the appellant preferred representation to the authority for reinstatement in service from the date, he was wrongly relieved from service and his service be regularized for the intervening period, he be paid the salaries for the same being his legitimate right of service, but not responded within the statutory period. (Copy as Annex "D")

Hence this appeal, inter alia, on the following grounds:-

**GROUND S:**

- a. That appellant vested rights of service till 15-04-2019, were curtailed according to his actual date of birth.
  - b. That respondents had no right to retire the appellant from service on wrong date of birth by depriving him of his legitimate right of service.
- That according to NIC and report of Medical Superintendent Police & Services Hospital, KPK, Peshawar, the actual date of

birth of appellant is 1959, so he is supposed to retired from service in the year, 2019.

- d. The appellant has been deprived from his service through illegal order and in colorful exercise of discretion.
- e. That the appellant reserves the right to agitate any other ground at the time of arguments.

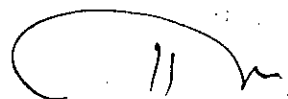
It is, therefore, most humbly prayed that on acceptance of the appeal, order dated 15-04-2009 of respondents be set aside he be reinstated into his service from the date of retirement and his service for the intervening period, be regularized. He be also paid his salaries for the period he was illegally deprived of his legitimate right of service with all back benefits in the interest of justice, with such other relief as may be deemed proper and just in circumstances of the case.

  
Appellant

Through



Saadullah Khan Marwat



Arbab Saiful Kamal  
Advocates.

Dated.27.03.2017

"A"

4

HAYAT SHAHEED TEACHING HOSPITAL PESHAWAR

OFFICE ORDER

No. \_\_\_\_\_/HSTH/E

Dated. \_\_\_\_\_/1989.

Mr. Muneef Khan, Muslim Sweeper of this institution is hereby appointed as Ward Orderly in BFS No. (2) plus usual allowances under the Govt. Rules w.e.f. 10.8.1989 (FN).

Administrator  
Hayat Shaheed Teaching Hospital  
Peshawar.

No. 11710-14/HSTH/E

Dated. 15/8/1989.

Copy of the above is forwarded for information and necessary action to:-

1. The D.M.S (Admn) Hayat Shaheed Teaching Hospital, Peshawar.
2. The Accounts Officer, Hayat Shaheed Teaching Hospital, Peshawar.
3. The Head of Cleaning Staff, Hayat Shaheed Teaching Hospital, Peshawar.
4. The Head of Ward Orderlies, Hayat Shaheed Teaching Hospital, Peshawar.
5. Mr. Muneef Khan, Muslim Sweeper, HSTH: for information. He is directed to report his arrival/departure to main office for record.

*Musmil*  
Administrator  
Hayat Shaheed Teaching Hospital  
Peshawar

Muneef

11

5

ROYBET TEACHING HOSPITAL,  
MADRAS.

No. \_\_\_\_\_ /KTH/S.

Dated 19 /11/2001.

OFFICE ORDER.

In Pursuance to the Finance Department letter No. FD(FC)1-1/97 dated 16.3.99 Mr. Munif Khan Ward Orderly of this institution is hereby allowed one premature increment with effect from 16.3.99 (P.A) on appointment from Muslim Sweeper post to ward orderly.

1  
MEDICAL SUPERINTENDENT,  
ROYBET TEACHING HOSPITAL,  
MADRAS.

No. 15155-56 /KTH/S.

Copy to:-

1. The Accounts Officer, KTH, Peshawar.
2. Mr. Munif Khan Ward Orderly, KTH, Peshawar.

*[Signature]*  
MEDICAL SUPERINTENDENT,  
ROYBET TEACHING HOSPITAL,  
MADRAS.  
16/11

.....

*[Signature]*  
4

*O. E. M. 6/1*

This page should be renewed or re-attested at least every five years, and the signature in lines 9 and 10 should be dated.

1. Name

*MR. Muneef Khan*

2. Race

*Muslim*

3. Residence

*vill. & P.O. Garbamel, Teh. of Distt, Peshawar*

4. Father's name and residence

*MR. Lajber Khan*

5. Date of birth by Christian era as nearly as can be ascertained

*۲۰ سال ۳ قمری*

*3931*

*Age Recorded by the Medical Superintendent; on his Medical certificate*

6. Exact height by measurement

*5' 6"*

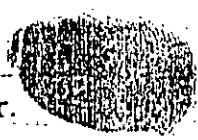
7. Personal marks for identification

*Mole on left face.*

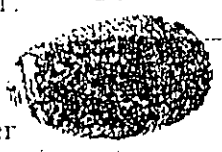
8. Left hand thumb and Finger impression of (non-gazetted) officer



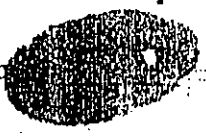
Little Finger.



Ring Finger.



Middle Finger

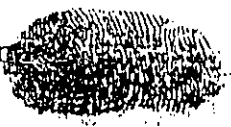


Fore Finger



Thumb.

Signature of Government servant



*[Signature]*

Administrator

Khyber Hospital Peshawar

9. Signature and designation of the Head of the Office, or other Attesting Officer

*Attested*

6

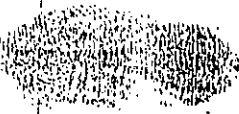
18

(SWEET)  
250-50-480/6-340

Temporary

Rs. 250/- P.M.

16/4/80



~~DO~~ ~~DO~~

Rs. 255/- P.M.

12/1980 EN

Revised

N.V.S. / Rs. 250-50-280/6-3110-7-375

~~DO~~ ~~DO~~

Rs. 260/- P.M.

12/1981 (F.N.)

~~DO~~ ~~DO~~

Rs. 265/- P.M.

12/1981 EN

AT 4/8

B

7

12-3-09  
Annexure - B

Ph: No. 091-9210509

MEDICAL SUPERINTENDENT POLICE & SERVICES HOSPITAL



N.-W.F.P., PESHAWAR

Ref. No. 825/113

AGE CERTIFICATE

Date: 12-3-09

Certified that Mr, Mureeb Khan S/O Lajbar Khan Village,  
Muh; Essaj Zai Sarband Distt, Peshawar appeared before me today  
on 11/03/2009 for age.

According to NIC No, 17301-1276155-5, his date of birth is  
1959 and by general appearance and bodily development in my opinion  
his date of birth is 1959.

Mark of Identification .  
Mole on face.

MEDICAL SUPERINTENDENT,  
POLICE AND SERVICES HOS:  
PESHAWAR...  
Medical Superintendent  
Police/Services. Hospital  
Peshawar.

12/03/09

*Atch*

8

Office of the Medical Superintendent  
Khyber Teaching Hospital Peshawar  
No. /KTH/EE  
Dated 28/4/2009

Office Order.

Mr. Munceef Khan Ward Order of this Institution is hereby retired from Govt. service on attaining to the age of superannuation on 15-1-2009 AN).

Sanction is hereby accorded to the grant of 180 days encashment in lieu of LPR to him.

Medical Superintendent  
Khyber Teaching Hospital  
Peshawar

No. 6805-12 /KTH/EE

Copy to:-

1. The Director Finance, KTH/KMC/KC, Peshawar.
2. The DMS(A) KTH, Peshawar.
3. The Accounts Officer KTH, Peshawar.
4. The Audit Officer, KTH, Peshawar.
5. The Resident Assit. Director Audit, KTH, Peshawar.
6. The Head Ward Orderly, KTH, Peshawar.
7. Mr. Munceef Khan S/O Lajbar Khan, W/O KTH, Peshawar.

Medical Superintendent  
Khyber Teaching Hospital  
Peshawar

AO  
9/5

A. Khan  
||



**BEFORE THE DIRECTOR GENERAL HEALTH KPK,**  
**PESHAWAR**

Subject:- WRONG DATE OF RETIREMENT.

*Respected Sir,*

1. That the applicant was serving the hospital since his date of appointment till the date of his wrongful retirement i.e. 15/04/2009.
2. That as the applicant was retired from service from a wrong date i.e. 15/04/2009 whereas he had to serve the hospital till 2019 as per Certificate issued by the Medical Superintendent, Police and Services Hospital, Peshawar dated 13/03/2009. (Copy of Age Certificate dated 12/03/2009 is attached).
3. That the applicant agitated qualified the matter before the hospital administration in 2009, whereby hospital administration referred the matter to Director General Health Services, N.W.F.P, Peshawar, but no action was taken in this regard. (Copy of letter dated 15/05/2009 of MS KTH, Peshawar to DG Health Services, N.W.F.P, Peshawar is attached).
4. That the applicant has been deprived of his service by the authority in an illegal and unfair manner as without confirmation of the date of birth of the

*Director*

11

applicant, the applicant was retired form service ten year prior to his actual date of retirement that is 15/04/2019.

5. That not only the applicant, but his family has also suffered a lot at the hands of authority by retiring the applicant before his actual date of retirement i.e. 15/04/2019.
6. That there is no bar on the authority to allow the applicant to continue his service, and he be paid for the intervening period whereby he was deprived of the legitimate right of the service.

It is, therefore, most humbly prayed that on acceptance of this representation, the applicant be reinstated into his service from the date, he was wrongfully retired from service and his service be regularized for the intervening period, he be paid his salaries for period he was deprived of legitimate right of service, he also be given all his service benefits in the interest of justice.

Dated:- 29/11/2016

*Muneeb Khan*  
11

Applicant

Muneeb Khan S/o Lajbar Khan  
R/o Mohallah Essa Zai Sarband  
Tehsil & District Peshawar  
CNIC No:- 17301-1276155-5  
Cell No:- 0315-9086953

بعدالت جناب سرسٹریٹونل صوبہ سرحد پشاور

متجناب ایڈوائس

بنام محکمہ صحت

قنیب خان

دعویٰ اپیل

باعث شکریہ ایتمک

مقررہ مندرجہ عنوان بالا میں اپنی طرف سے واسطے پیروی و جواب دہی وکل کاروائی متعلقہ آن مقام پشاور کیسٹل سٹڈن اڈاسٹن سٹڈن ایڈوائس ہائی کورٹ کو وکیل مقرر کر کے اقرار کیا جاتا ہے کہ صاحب موصوف کو مقدمہ کی کل کاروائی کا کابل اختیار ہوگا نیز وکیل صاحب کو کرنے باضی نامہ و تقریر ثالثہ و فیصلہ بتلف دینے جواب دہی اور اقبال دعویٰ اور بھرتی ڈگری کرنے اجراء اور وصولی چیک و روپیہ اور مرضی دعویٰ اور درخواست ہر قسم کی تقدیر اور اس پر دستخط کرنے کا اختیار ہوگا نیز بھرتی عدم پیروی یا ڈگری یکطرفہ یا اپیل کی برآمدگی اور منسوخی نیز دائر کرنے اپیل نگرانی و نظر ثانی و پیروی کرنے کا اختیار ہوگا اور بصورت ضرورت مقدمہ مذکور کے کل یا جزوی کاروائی سے واسطے اور وکیل یا مختار قانونی کو اپنے ہمراہ یا اپنی بجائے تفرک کا اختیار ہوگا اور صاحب مقرر شدہ کو بھی وہی جملہ مذکورہ بالا اختیارات حاصل ہوں گے اور اس کا ساختہ پرواختہ منظور قبول ہوگا و دوران مقدمہ میں جو خرچہ و ہرجانہ التوا مقدمہ کے سبب سے ہوگا اس کے مستحق وکیل صاحب موصوف ہوں گے نیز بقایا و خرچہ کی وصولی کرنے کا بھی اختیار ہوگا اگر کوئی تاریخ پیشی مقام درجہ پر ہو یا مد سے باہر ہو تو وکیل صاحب یا بند نہ ہوں گے کہ پیروی مذکور کریں۔

لہذا کالت نامہ رکھ دیا کہ سند ہے۔

المترقوم

Handwritten signatures and stamps at the bottom of the page, including names like 'سید محمد خان مرحمت' and 'ایڈوائس'.

من رویتہ تاریخ  
ایڈوائس

Before the Service Tribunal, KPK, Peshawar.

Muneeb Khan vs Medical Supd & others.

Application for Condonation of delay

Place on file.  
24/04/2017.

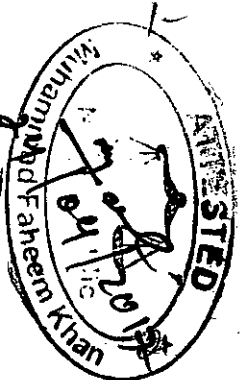
Respectfully Sheweth,

That the instant appeal is pending adjudication in this honorable tribunal in which no date of hearing is fixed.

That the impugned Retirement order was issued on 28/4/2009 and which appellant could not file Representation as he was waiting for a good outcome of his efforts from the department.

That at last the appellant file his representation against the impugned order on 29/11/16, that though the representation and present service appeal is late but the matter is one of continuous Cause as the appellant has been deprived of his vested right of service from a wrong date.

It is therefore requested that delay in filing of appeal be condon in the interest of Justice.



Applicant's - Confess of instant appeal are true & correct.  
Deponente Muneeb Khan S/o Lajper



Appellate  
Adviser Habib Safdar Khan

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**

**Service Appeal No. 314 /2017**

**Muneeb Khan.....Appellant**

**VERSUS**

**The Medical Superintendent, KTH etc....Respondents**

**INDEX**

S.No.	Description of Documents	Date	Annexure	Pages
1.	Memo of Reply with Affidavit			1- 3
2.			▲	

**Respondent No.1  
(Hospital Director)**

**Through**

**Khaled Rahman**  
*Advocate,*  
*Supreme Court of Pakistan*

3-D, Haroon Mansion,  
Khyber Bazar, Peshawar.  
Off: 091-2592458  
Cell #: 0345-9337312

**Dated: 13 /07/2017**

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL PESHAWAR**Service Appeal No. 314 /2017

Muneeb Khan.....Appellant

VERSUS

The Medical Superintendent, KTH etc....Respondents

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**REPLY ON BEHALF OF RESPONDENT NO.1 (HOSPITAL DIRECTOR)**

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Respectfully Sheweth,

**Preliminary objections.**

- I. That the appellant stood retired on attaining the age of superannuation w.e.f. 15.04.2009 vide order dated 28.04.2009 while the departmental appeal was filed on 29.11.2016. As the departmental appeal was hopelessly time barred being filed the delay of more than 07 years the instant service appeal is not competent under the law.
- II. That Respondent No.1 is the authority of an autonomous institution while the appeal is a civil servant, therefore, Respondent No.1 has wrongly been added as one of the Respondents. Thus the name of Respondent No.1 needs to be struck off under Order-I, Rule-10 CPC.
- III. That the appellant has concealed material facts from the Hon'ble Tribunal and has not approached the Hon'ble Tribunal with clean hands, therefore, the instant appeal merits outright rejection.
- IV. That the appellant has got no cause of action as well as locus standi to file the instant appeal.
- V. That the appellant is estopped by his own conduct to file the instant appeal.

**Reply to Facts:**

1. The appellant admits his date of birth on 16.04.1980 to be recorded different at different places but he failed to apply for correction at the relevant time. It is a settled law that a civil servant must apply for correction of his date of birth within two years from the date of his appointment. The law does not allow the correction of date of birth even beyond two years period while the correction of date of birth after retirement is unknown to law.
2. Needs no reply.
3. Misconceived. Firstly the Certificate dated 12.03.2009 cannot be considered at that stage; secondly, the appeal of the appellant was filed after more than 07 years of the certificate cited above which thus has lost its efficacy; thirdly, determination of age is a technical process requiring scientific analysis while the certificate is based upon simple general observation by the Medical Officer which by no means can be considered authentic being an opinion simplicitor not based on any solid material.
4. Misconceived. The appellant was retired under the Rules on completion of 60<sup>th</sup> year. Before that he never applied for correction of his date of birth.
5. Misconceived.
6. Misconceived. The departmental appeal was hopelessly time barred and moreover the same has not been filed before the answering Respondent.

**Reply to Grounds:**

- A. Absolutely incorrect. Appellant has no right muchless vested to claim further service after his superannuation.
- B. Incorrect. Appellant was rightly retired after serving for 60 years.
- C. Incorrect. The date of birth once entered cannot be altered after two years service.
- D&E. Incorrect hence denied.

It is, therefore, humbly prayed that on acceptance of this reply, the appeal of appellant may graciously be dismissed with costs.

Through

**Respondent No.1/H.D**

**Khaled Rahman,**  
Advocate,  
Supreme Court of Pakistan

**Dated: 13/07/2017**

**Counter Affidavit**

Verified as per instructions that the contents of this reply are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.

Counsel



**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**

**PESHAWAR.**

**SERVICE APPEAL NO. 314 OF 2017**

Muneeb Khan..... **Appellant**

**Versus**

1. Medical Superintendent, Khyber Teaching Hospital, Peshawar.
2. Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

..... **Respondents**

**Respectfully Sheweth:**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**Preliminary Objections:-**

1. That the appellant has no cause of action/locus standi.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the appellant has filed the appeal in a non proper form and may be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.

**ON FACTS:**

1. Pertain to record, hence no comments.
2. Pertain to record, hence no comments.
3. Correct. Medical Superintendent Police Services Hospital issued Health and age certificate in 12/03/2009, wherein date of birth of the appellant was assessed 1959 which was also in accordance with NIC i.e. 1959, while the appellant was appointed as Ward orderly on 16/04/1980 on the basis of Medical Certificate issued by Medical Superintendent Police Hospital Peshawar at that time his age was shown by appearance as 31 years and on the attaining the age of superannuation he was retired as per ESTA Code 2011 at p-148 (Copy attached as **Annex-A**) para-1 change in the recorded date of birth of a Civil Servant wherein it has clearly been mentioned that under the existing Rules immediately after his induction in to service every Civil Servant is required to declared the date of his birth by the Christian era. This is supplemented by the opinion of Civil Surgeon/Standing Medical Board. Para-2 the date of birth of a Civil Servant as recorded in his services documents remains contently in his knowledge. GFR-116 also provides that the date of birth once recorded can not be altered except in the case of clerical error without the pervious order of the local administration. In case of Civil Servants in BPS-16 and below after special inquiry and only if the Government servant applies for it within two years from the date of his entry into Government servant.

The date of birth once recorded when he inducted into Government service on 16/04/1980 the medical certificate issued by Medical Superintendent Police Services Hospital Peshawar at that time his age was shown by appearance as 31 years and that is final as he can apply within two years from the date of his entry into Government service.

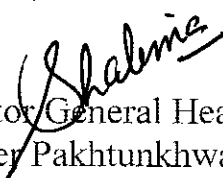
4. As mentioned in para-03 above.
5. As mentioned in para-03 above.
6. As this belated stage after 37 years of service his request may not be entertain as per para-03 of the reply mentioned above. Further his representation is badly time barred.


**Grounds:**

- a. Incorrect. Once that date of birth recorded can only be change within two years from the date of his entry into Government service. Thus his request is not based on fact.
- b. As in para-a above.
- c. As in para-a above.
- d. As in para-a above.

**Prayer:**

Keeping in view of the above, it is prayed that the appeal may kindly be dismissed with cost.

  
Director General Health Services,  
Khyber Pakhtunkhwa, Peshawar.  
**Respondent No. 03**

  
Secretary,  
Health Department,  
Khyber Pakhtunkhwa, Peshawar.  
**Respondent No. 02**

Change in the recorded date of birth of the civil servants

I am directed to say that under the existing rules, immediately after his induction into service, every civil servant is required to declare the date of his birth by the Christian era with as far as possible confirmatory/conclusive evidence such as matriculation certificate, municipal birth certificate and so on. This is supplemented by the opinion of the Civil Surgeon/Standing Medical Board. The department after full satisfaction with age and on the basis of medical examination of the new entrant in the department, enter the same in an authentic document i.e. Service Book/History of Service etc. The said document is maintained by the Department/ Audit and is always checked periodically.

The date of birth of a civil servant is recorded in his service documents and remains constantly in his knowledge. This is reiterated in his ACRs and the Seniority List issued by the department from time to time. The preparation of service record of an officer is an official act and according to law, it is presumed to be correct. GFR-116 also provides that the date of birth once recorded cannot be altered except in the case of clerical error, without the previous orders of the Local Administration. Despite this, certain Government Servants are complacent with the state of affairs and sleep over their rights for decades knowing fully about their dates of birth entered in their Service Books etc. It would therefore be too much to expect such a belated claim from a Civil Servant that he was born on a date other than the one entered in his service documents and that the delay in representation was due to ignorance of the alleged erroneous entry. After all, there is always attached a finality to decisions taken by competent authorities.

I am, accordingly, directed to request that all concerned may please be informed in clear terms that in future a request for an alteration in the recorded date of birth of a Government servant may only be entertained by the Appointing Authority in the case of officers in BS-17 and above and by the Administrative Department in the case of civil servants in BS-16 and below, after special enquiry and only if the Government servant applies for it within two years from the date of his entry into Government service.

(Authority; No.SOR.II(S&GAD)5(40)/87, dated 15<sup>th</sup> February, 1989)

**BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL**  
**PESHAWAR.**

**SERVICE APPEAL NO. 314 OF 2017**

Muneeb Khan.....**Appellant**

**Versus**

1. Medical Superintendent, Khyber Teaching Hospital, Peshawar.
2. Secretary, Health Department, Khyber Pakhtunkhwa, Peshawar.
3. Director General Health Services, Khyber Pakhtunkhwa, Peshawar.

.....**Respondents**

**Respectfully Sheweth:**

**PARAWISE COMMENTS ON BEHALF OF RESPONDENTS**

**Preliminary Objections:-**

1. That the appellant has no cause of action/locus standi.
2. That the appellant has filed the instant appeal just to pressurize the respondents.
3. That the instant appeal is against the prevailing Law and Rules.
4. That the appeal is not maintainable in the present form and also in the present circumstances of the issue.
5. That the appellant has filed the appeal in a non proper form and may be dismissed.
6. That the appellant has not come to the Tribunal with clean hands.
7. That the appeal is time barred.

**ON FACTS:**

1. Pertain to record, hence no comments.
2. Pertain to record, hence no comments.
3. Correct. Medical Superintendent Police Services Hospital issued Health and age certificate in 12/03/2009, wherein date of birth of the appellant was assessed 1959 which was also in accordance with NIC i.e. 1959, while the appellant was appointed as Ward orderly on 16/04/1980 on the basis of Medical Certificate issued by Medical Superintendent Police Hospital Peshawar at that time his age was shown by appearance as 31 years and on the attaining the age of superannuation he was retired as per ESTA Code 2011 at p-148 (Copy attached as **Annex-A**) para-1 change in the recorded date of birth of a Civil Servant wherein it has clearly been mentioned that under the existing Rules immediately after his induction in to service every Civil Servant is required to declared the date of his birth by the Christian era. This is supplemented by the opinion of Civil Surgeon/Standing Medical Board. Para-2 the date of birth of a Civil Servant as recorded in his services documents remains contently in his knowledge. GFR-116 also provides that the date of birth once recorded can not be altered except in the case of

The date of birth once recorded when he inducted into Government service on 16/04/1980 the medical certificate issued by Medical Superintendent Police Services Hospital Peshawar at that time his age was shown by appearance as 31 years and that is final as he can apply within two years from the date of his entry into Government service.

4. As mentioned in para-03 above.
5. As mentioned in para-03 above.
6. As this belated stage after 37 years of service his request may not be entertain as per para-03 of the reply mentioned above. Further his representation is badly time barred.

**Grounds:**

- a. Incorrect. Once that date of birth recorded can only be change within two years from the date of his entry into Government service. Thus his request is not based on fact.
- b. As in para-a above.
- c. As in para-a above.
- d. As in para-a above.

**Prayer:**

Keeping in view of the above, it is prayed that the appeal may kindly be dismissed with cost.

*Shahina*  
Director General Health Services,  
Khyber Pakhtunkhwa, Peshawar.  
**Respondent No. 03**

*[Signature]*  
Secretary,  
Health Department,  
Khyber Pakhtunkhwa, Peshawar.  
**Respondent No. 02**

### Change in the recorded date of birth of the civil servants

I am directed to say that under the existing rules, immediately after his induction into service, every civil servant is required to declare the date of his birth by the Christian era with as far as possible confirmatory/conclusive evidence such as matriculation certificate, municipal birth certificate and so on. This is supplemented by the opinion of the Civil Surgeon/Standing Medical Board. The department after full satisfaction with age and on the basis of medical examination of the new entrant in the department, enter the same in an authentic document i.e. Service Book/History of Service etc. The said document is maintained by the Department/ Audit and is always checked periodically.

The date of birth of a civil servant as recorded in his service documents remains constantly in his knowledge. This is reiterated in his ACRs and the Seniority List issued by the department from time to time. The preparation of service record of an officer is an official act and according to law, it is presumed to be correct. GFR-116 also provides that the date of birth once recorded cannot be altered except in the case of clerical error, without the previous orders of the Local Administration. Despite this, certain Government Servants are complacent with the state of affairs and sleep over their rights for decades knowing fully about their dates of birth entered in their Service Books etc. It would therefore be too much to expect such a belated claim from a Civil Servant that he was born on a date other than the one entered in his service documents and that the delay in representation was due to ignorance of the alleged erroneous entry. After all, there is always attached a finality to decisions taken by competent authorities.

I am, accordingly, directed to request that all concerned may please be informed in clear terms that in future a request for an alteration in the recorded date of birth of a Government servant may only be entertained by the Appointing Authority in the case of officers in BS-17 and above and by the Administrative Department in the case of civil servants in BS-16 and below, after special enquiry and only if the Government servant applies for it within two years from the date of his entry into Government service.

(Authority; No.SOR.II(S&GAD)5(40)/87, dated 15<sup>th</sup> February, 1989)

**BEFORE THE KPK, SERVICE TRIBUNAL, PESHAWAR**

S.A. No. 314 /2017

Muneeb Khan                      versus                      Medical Supdt: & Others

**REL ICATION**

**Respectfully Sheweth,**

**PRELIMINARY OBJECTIONS:**

All the preliminary objections of respondents are illegal and incorrect. No reason in support of the same is ever given as to why the appellant has no cause of action, filed to pressurize respondents, against prevailing Law, not maintainable, not in proper form, unclean hands, time barred.

As for as preliminary objections of R. No. 01 is concerned, appellant was retired from service on 28-04-2009 and submitted representation to the Authority within one month as is evident from his letter dated 19-05-2009. Appellant does not belong to autonomous Institution, but at the time of appointment of his appointment dated 15-08-1989, the hospital was not an autonomous Institution but a regular department. In preliminary objection No. 02 R. No. 01 states that his name should be deleted from the panel of respondents and when such is the position, then there was no need for him to submit written statement but to submit application for deletion of his name from the panel of respondents, meaning thereby that R. No. 01 is not a contesting party.

**ON FACTS:**

1-2. Needs no comments. As the para of the appeal are not replied by respondents.

3. Admitted correct to the extent of certificate issued by MS, Police Hospital as 12-03-2009 assessing Date of Birth of appellant as 1959. When age of appellant was assessed as 1959, then he was to be retired from service in the year 2019. He was wrongly retired from service. His date of birth was declared as 1959.

4-5. As above.

6. Not correct. The para of the appeal is correct regarding representation to the authority as per letter dated 19-05-2009, stating therein that he has made appeal to the authority will within time. (Copy Attached)

### GROUNDS:

All the grounds of the appeal are legal and correct while that of the reply are illegal and incorrect. The same are again adopted.

It is, therefore, most humbly prayed that the appeal be accepted as prayed for.



Appellant

Through

Saadullah Khan Marwat

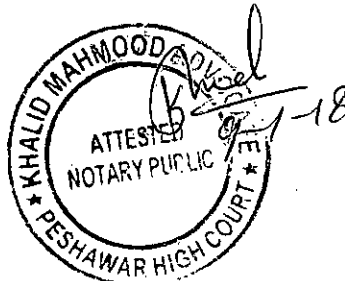
Advocate,

Dated: -01-2018

### AFFIDAVIT

I, Muneeb Khan, appellant do hereby solemnly affirm and declare that contents of the **Appeal & rejoinder** are true and correct to the best of my knowledge and belief while that of reply of respondents are illegal and incorrect.

I reaffirm the same on oath once again to be true and correct as per the available record.



DEPONENT



کریٹیفٹ سے وابستہ ایک ایگزیکٹو آفیسر - ایگزیکٹو آفیسر - ایگزیکٹو آفیسر

فہرست

دو طرح کی کریٹیفٹ کے لئے درخواستیں - 4-2009

سائنس کے شعبہ کے ریٹائرڈ آفیسر - آئی آر ڈی - 12/5-6855

2019 میں جاری کارڈ کے مطابق فیس کی ریٹائرمنٹ

لیجسلیٹو آپریشن کے تحت فیس کی ریٹائرمنٹ - 4-2009

آئی آر ڈی - 12/5-6855 اور فیس کی ریٹائرمنٹ کے تحت فیس کی ریٹائرمنٹ

7/5/09

ایگزیکٹو آفیسر - ایگزیکٹو آفیسر - ایگزیکٹو آفیسر

Office No. 2252  
Dated 07/5/09

Keep in view the  
request of Mrs. Police Inspector  
to avoid charges of  
(disciplinary) & think a proper  
Mental Break was arranged  
for Mrs. Police Inspector  
on 07/5/09.

Signature

Handwritten initials